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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,642	12/31/2001	Thomas Edward Mungavan	C27-002-01-US	5809

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EXAMINER

STRANGE, AARON N

ART UNIT	PAPER NUMBER
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2153

DATE MAILED: 03/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/036,642

Applicant(s)

MUNGAVAN ET AL.

Examiner

Aaron Strange

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claim 22 is objected to because of the following informalities: There appears to be a typographical error "is base upon" in lines 1-2. The Examiner recommends that the claim be amended to recite "is based upon". Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 4-11 and 14-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claims 4,5,8-11, and 14-19 each recite the limitation "the custom content media". There is insufficient antecedent basis for this limitation in the claim. The Examiner recommends that the claims be amended to recite "the custom content media programs".

5. With regard to claim 6, the limitation "custom content media transmissions" is unclear. Claim 1, from which claim 6 depends, states that the subscriber specific

packages are transmitted. The Examiner recommends that the claim be amended to recite "subscriber specific package transmissions" or a similar recitation.

6. The term "manipulate" in claim 6 renders the claim indefinite. The term "manipulate" is not defined by the claim or the specification and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear what type of operation manipulating a transmission across multiple networked hardware devices is intended to be. For the purpose of applying prior art, the claim has been interpreted to mean that the system can distribute the transmission capabilities across multiple devices.

7. With regard to claim 7, the limitation "retransmit custom content media that fails to be transmitted successfully" is unclear. Claim 1, from which claim 7 depends, states that the subscriber specific packages are transmitted. The Examiner recommends that the claim be amended to recite "retransmit subscriber specific packages that fail to be transmitted successfully" or a similar recitation.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

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applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1-6,8-10,12-17, and 19-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Langseth et al. (US 6,741,980).

10. With regard to claims 1 and 13, Langseth discloses a distribution system for delivering dynamically assembled media, the distribution system comprising: a plurality of custom content media programs arranged in to discrete products (services provide various content from the database) (Col 7, Lines 16-21); an assembler for bundling a predetermined number of the products into subscriber specific packages (subscribers can subscribe to any number of services) (Col 7, Lines 33-40); and, a processor for transmitting the subscriber specific packages in a predetermined order to a subscriber (service delivery may be scheduled) (Col 7, Line 55 to Col 8, Line 13).

11. With regard to claim 2, Langseth further discloses a builder for designing the custom content media programs (services are created) (Col 7, Lines 16-17).

12. With regard to claims 3 and 14, Langseth further discloses that a portion of the custom content media programs comprise dynamic content (live sports scores, stock tickers, specifically created audio content, etc)(Col 8, Line 54 to Col 11, Line 20).

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13. With regard to claims 4 and 15, Langseth further discloses that a portion of the custom content media is generated dynamically, just prior to transmission (live score alerts and stock tickers are dynamically generated just prior to being transmitted) (Col 8, Line 63 and Col 10, Line 45).

14. With regard to claims 5 and 16, Langseth further discloses that the custom content media is encoded prior to transmission (Real Audio transmissions) (Col 11, Lines 7-12).

15. With regard to claim 6, Langseth further discloses that the system is able to manipulate a predetermined number of custom content media transmissions across multiple networked hardware devices (transmissions may be distributed to a plurality of data distribution servers) (Col 15, Lines 35-54).

16. With regard to claims 8 and 17, Langseth further discloses that a portion of the custom content media is interactive (links to related content) (Col 22, Lines 36-39).

17. With regard to claim 9, Langseth further discloses that a portion of the custom content media is based upon predetermined demographic criteria (preferred music type) (Col 11, Lines 7-12).

18. With regard to claim 10, Langseth further discloses the custom content media may be modified based upon feedback from a subscriber (users may modify their profile which would change the provided services) (Col 12, Lines 61-67).

19. With regard to claim 12, Langseth further discloses that a portion of the custom content media comprises third party information (advertisements for third party services) (Col 22, Lines 36-39 and Fig 14, 706-710).

20. With regard to claim 19, Langseth further discloses that the step of creating custom content media comprises the step of selecting content that is specific to a subscriber (content may be personalized for subscribers) (Col 7, Lines 37-40).

21. With regard to claim 20, Langseth discloses a method of customizing delivery of dynamically assembled, personalized media to a subscriber, the method comprising the steps of: a. creating a plurality of custom content media programs arranged into discrete products (services provide various content from the database) (Col 7, Lines 16-21); b. assembling the products into subscriber a specific package (subscribers can subscribe to any number of services) (Col 7, Lines 33-40); c. transmitting the package to a subscriber (Col 7, Line 55 to Col 8, Line 13); and d. modifying subsequent transmittals (each transmittal will change when real time information such as stock prices and sports scores (Col 8, Line 63 and Col 10, Line 45) is provided or when subscriber modifies their profile) (Col 12, Lines 61-67).

22. With regard to claim 21, Langseth further discloses that the step of modifying subsequent transmittals is based upon subscriber related responses generated by the subscriber (subscribers may modify their profile which would change the provided services) (Col 12, Lines 61-67).

23. With regard to claim 22, Langseth further discloses that the step of modifying subsequent transmittals is based upon subscriber related responses generated by a third party (newly received data will be reflected in subsequent transmittals)(Col 13, Lines 51-65).

24. With regard to claim 23, Langseth further discloses that the step of modifying subsequent transmittals is generated at predetermined intervals (updates may be received after a predetermined interval) (Col 7, Lines 64-66).

25. With regard to claim 24, Langseth further discloses that the step of modifying subsequent transmittals is based upon archived, personal data (updates in user profiles will be reflected in subsequent transmissions) (Col 12, Line 61 to Col 13, Line 16).

26. With regard to claim 25, Langseth further discloses that the step of assembling the products into a subscriber specific package includes the generation of customized content just prior to the step of transmission (live score alerts and stock tickers are

dynamically generated just prior to being transmitted) (Col 8, Line 63 and Col 10, Line 45).

Claim Rejections - 35 USC § 103

27. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

28. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Langseth et al. (US 6,741,980) in view of Official Notice.

29. With regard to claim 7, while the system disclosed by Langseth shows substantial features of the claimed invention (discussed above), it fails to specifically recite that the system has the ability to analyze feedback and retransmit custom content media that fails to be transmitted successfully.

The Examiner takes Official Notice that retransmitting data that fails to be transmitted successfully is old and well known in the art. It is well known that computer networks are not 100% reliable, and failed transmissions may occur for a large number of reasons. Monitoring for feedback such as an acknowledgement packet and retransmitting content which fails to be transmitted successfully would be advantageous since it would have ensured delivery of the content to the subscriber.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to monitor feedback and retransmit custom content media that fails to be transmitted successfully. This would have ensured delivery of the content to the subscriber.

30. Claims 11 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Langseth et al. (US 6,741,980) in view of Levy (US 2002/0052885).

31. With regard to claims 11 and 18, while the system disclosed by Langseth shows substantial features of the claimed invention (discussed above), it fails to disclose that a portion of the custom content media includes embedded information designed to deter file sharing.

Levy teaches a method of deterring sharing of audio files that are distributed via the Internet. Levy discloses embedding information in the audio files that prevents indicates whether or not the file is allowed to be shared (Par 41). This would have been an advantageous addition to the system disclosed by Langseth, since Langseth discloses the delivering personalized radio content (Langseth, Col 11, Lines 4-21). This would have prevented users of the system from sharing the received audio files with users who had not paid for them.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include embedded information in the audio files

distributed by Langseth to deter file sharing. This would have prevented users of the system from sharing the received audio files with users who had not paid for them.

Conclusion

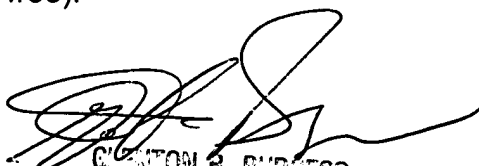
32. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

33. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron Strange whose telephone number is 571-272-3959. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Burgess can be reached on 571-272-3949. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AS 2/28/2005


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